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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. <u>93-37</u>
	)	
LEHIGH VALLEY COMMUNITY	)	File No. BPED-891019MF
BROADCASTERS BOARD OF DIRECTORS <sup>1</sup>	)	
Channel 207A	)	
Allentown, Pennsylvania	)	
	)	
BEACON BROADCASTING CORPORATION	)	File No. BPED-900905ML
Channel 207A	)	
Allentown, Pennsylvania	)	
	)	
For Construction Permit for a	)	
New Noncommercial Educational	)	
FM Station	)	

To: Administrative Law Judge Joseph Chachkin

**MOTION FOR SUMMARY DECISION**

Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh"), through its attorneys and pursuant to Section 1.251 of the Rules, hereby moves for summary decision in its favor with respect to the financial issue designated against it in the Hearing Designation Order ("HDO"), DA 93-154, released March 9, 1993. In support thereof, Lehigh respectfully states as follows:

A. Background

1. Question 1, Section III on page 5 of FCC Form 340 states:

Is this application contingent upon receipt of a grant from the National Telecommunications and Information Administration?        Yes        No.

<sup>1</sup> The applicant's initial application used this name. However, the applicant's formal name is Lehigh Valley Community Broadcasters Association, Inc.

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The instructions to Question 1 provide in pertinent part that

If... [Question 1] is answered "Yes", your application cannot be granted until all of the necessary funds are committed or appropriated. In the case of grants from the National Telecommunications and Information Administration, no further action on your part is required. (Emphasis added.)

2. Lehigh answered Question 1 in the affirmative, stating that its application was contingent upon receipt of a grant from the National Telecommunications and Information Administration (NTIA). In accordance with the instructions to Question 1, Lehigh thereafter made no further report to the Commission regarding the status of its NTIA application, intending simply to inform the Commission as required upon receipt of NTIA funding, in accordance with Commission policy. See, KOED, Inc., 5 FCC Rcd 1784, 1785 (para.9) (1990).

3. The Audio Services Division noted in the HDO (para. 5) that Lehigh had applied to NTIA for funding. Citing the fact that Lehigh has not "received this grant," the Audio Services Division designated the following financial qualifications issue (HDO, para. 24):

To determine with respect to Lehigh ... whether the applicant is financially qualified.

B. Argument

4. The Commission's Rules provide that summary decision is appropriate where there is no genuine issue of material fact for determination at the hearing. 47 C.F.R. 1.251(a). Here, the financial qualifications issue specified

against Lehigh is quite narrow notwithstanding the ostensibly broad language of the ordering clause of the HDO. It is established Commission policy that an applicant need not show that it has obtained the proposed NTIA funding prior to a grant, and that the Commission will grant the application upon applicant's receiving its NTIA funding within a reasonable time after the grant. KOED sums at 1785 Lehigh therefore is

financial issue, explanatory statements in text of HDO define scope of inquiry); SRC, Inc., 11 FCC 2d 537, 539 (Rev. Bd. 1968) (financial issue held narrow in scope where "[t]here is no indication in the designation order that the Commission is concerned with any of the School District's costs other than the bank loan"). Thus, the fact that an issue "is posed in general terms does not mean that an unrestricted inquiry is authorized." Kittyhawk Broadcasting Corp., 20 FCC 2d 1011, 1021 (Rev. Bd. 1970) ("the issue must be read in light of the facts upon which the Board concluded that a substantial question was raised"); Media, Inc., 26 FCC 2d 972, 974 (Rev. Bd. 1970) (scope of evidentiary inquiry under designated issue is limited by relevant explanatory statements in designation order).<sup>3</sup>

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<sup>3</sup> It appears that this issue was improvidently designated. In KOED, supra, the Commission stated clearly that proposed NTIA funding will not be the subject of inquiry at hearing. Instead, the Commission will simply condition grant of the construction permit upon the applicant's reporting back within a reasonable time after grant that the proposed NTIA funding has been received. 5 FCC Rcd at 1785.

C. Conclusion

6. For the foregoing reasons, Lehigh respectfully requests that this motion be granted and that the financial issue specified against it in the HDO be resolved by summary decision in its favor.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION, INC.

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**CERTIFICATE OF SERVICE**

I, Artie King, Secretary in the law office of Schwartz, Woods & Miller, do hereby certify that I have on this 14th day of April 1993 sent by First Class United States mail, postage prepaid, copies of the foregoing **MOTION FOR SUMMARY DECISION** to the following:

The Honorable Joseph Chachkin \*  
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Artie King

\* Hand Delivered